

**UNCLASSIFIED**

The Administration urges the Senate to promptly reauthorize the FISA Amendments Act (FAA) without amendment. The FAA expires in four days. It is critical that the legislation be sent to the President before the authority expires.

**LEAHY AMENDMENT**

What the Amendments Does: Shortens the sunset date to June 1, 2015 and adds additional reporting requirements.

Talking Points:

- We support the House passed sunset date of 2017 and oppose any effort to shorten the sunset date to 2015. The extensive congressional and judicial oversight and the strong track record of compliance supports an extension longer than, not shorter than, the original authorization.
- Aligning FAA with expiration of provisions of the Patriot Act risks confusing distinct issues.
- Frequent Congressional and public debate on intelligence authorities poses a greater risk of inadvertent disclosure of classified information.
- No additional reporting requirements are necessary. Section 702 of FISA is a well calibrated statute that provides for ample oversight by all three branches of government. This oversight framework ensures robust protections for the privacy and civil liberties of U.S. persons.

**WYDEN-UDALL AMENDMENT TO REQUIRE A REPORT ON THE PRIVACY IMPACT OF FISA AMENDMENTS ACT SURVEILLANCE**

What the Amendment Does: Requires the DNI to submit a report to Congress and the public on the impact FAA and other surveillance authorities have on the privacy of United States persons.

Talking Points:

- The Administration opposes this amendment. The goal of this amendment is to obtain an estimate of the number of U.S. persons' communications that may have been collected. Two independent inspectors general have determined, and reported to Congress, that it is not feasible to provide actual numbers or estimates. They also found that an effort to provide such numbers by deliberately trying to identify U.S. person information would adversely affect the privacy of any U.S. persons whose incidentally collected communications may exist within the collected data.
- Representatives of the Intelligence Community have briefed the Judiciary and Intelligence Committees in more detail as to why it is not feasible to provide such numbers or estimates and stand ready to answer questions from other Members in a classified setting.
- FAA contains significant privacy protections for U.S. persons, to include extensive reporting to Congress to allow Congress to assess the privacy impact of FAA on U.S. persons.

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## **MERKLEY AMENDMENT ON DISCLOSURE OF DECISIONS, ORDERS AND OPINIONS OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT**

What the Amendment Does: Requires the Attorney General to declassify and make available to the public, in a manner consistent with the protection of national security and intelligence sources and methods, opinions or orders of the FISA Court that include a significant construction or interpretation of the law.

### Talking Points:

- We oppose this amendment. The Executive Branch works diligently to ensure Congress is fully informed of the intelligence collection operations under FAA, notwithstanding the need for the Executive Branch to carry out certain sensitive intelligence activities in a classified manner.
- As part of Congress' intensive oversight of FISA activities, the Intelligence and Judiciary Committees receive, in classified form, all FISA Court opinions that include a significant interpretation of FISA provisions.
- We have committed to reviewing FISC opinions for release to the public with necessary redactions to protect national security equities and that effort is ongoing.
- This process must, by necessity, be undertaken with great care. In many cases classified information is so intertwined with the legal analysis that redacting the classified information leaves a document that lacks any meaningful analysis. Because the Executive Branch is already undertaking a review of the FISC opinions for possible public release, we believe this amendment is unnecessary.

## **PAUL AMENDMENT**

What the Amendment Does: Prohibits the Federal Government from obtaining or seeking to obtain information relating to an individual or group of individuals held by a third-party in a system of records and prevents any such information from being admissible in a criminal prosecution unless (a) express and informed consent has been given or (b) the Government obtains a warrant.

### Talking Points:

- We strongly oppose this amendment as it will effectively repeal the FISA Amendments Act and other federal laws by requiring a probable cause determination to obtain information on our foreign adversaries located overseas. As such, it would overturn years of federal law.
- This proposed amendment would severely limit the effectiveness of law enforcement, authorities at all levels of government. For example, Governments rely on legal tools such as grand jury subpoenas. The use of such tools would be prohibited under the amendment if that information is drawn from almost any system of records.